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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,880

10/21/2005

Juuro Aoyagi

4296-183 US

7856

26817

7590

03/04/2008

MATHEWS, SHEPHERD, MCKAY, & BRUNEAU, P.A.
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EXAMINER

BLAND, LAYLA D

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

03/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,880	Applicant(s) AOYAGI, JUURO	
	Examiner LAYLA BLAND	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/10/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election without traverse of Group I in the reply filed on January 14, 2008 is acknowledged. Claims 1-14 are pending in this application. Claims 11-14 are withdrawn from consideration as being drawn to a non-elected invention. Claims 1-10 are examined on the merits herein.

Priority

This application is a national stage entry of International Application No. PCT/JP04/05761, filed April 22, 2004, which claims priority to Japanese Application No. 2003-122470, filed on April 25, 2003. The copy of certified copy of the priority has been filed with the instant Application. It is noted that Japanese Application No. 2003-122470 is in Japanese; no translation of said Japanese application into English has been provided.

Information Disclosure Statement

Only the English abstracts of the foreign patent documents listed on the IDS of October 10, 2006 were considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kulbe et al. (US 4,689,322, August 25, 1987).

Kulbe et al. teach calcium alginate beads having a diameter of approximately 5 mm. The beads are formed by dropping an aqueous solution of sodium alginate into an aqueous calcium chloride solution [column 14, Example 1]. 50 kg of calcium alginate prepared in this way and 80 kg of water are used to prepare soft gelatin capsules [column 20, lines 5-34].

It is noted that "for preventing and healing constipation" is an intended use of the claimed composition. A recitation of the intended utility in the preamble does not impart patentability to a known composition. In re Spada, 911 F.2d 705, 15 U.S.P.Q.2d 1655 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kulbe et al. (US 4,689,322, August 25, 1987).

Kulbe et al. teach as set forth above.

Kulbe et al. do not teach the degree of crosslinking of calcium alginate hydrogel.

However, considering that the composition of Kulbe et al. is made in substantially the same way as the instantly claimed composition and the claimed degree of crosslinking is quite broad at 30-90%, it is assumed that the composition of Kulbe et al. very likely meets the limitations of claim 3. Since the Office does not have the facilities for preparing the claimed materials and comparing them with prior art inventions, the burden is on Applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

Claims 1-10 are rejected under 35 U.S.C. 103(a) as obvious over Aoyagi et al. (US 6,299,867, October 9, 2001, PTO-1449 submitted October 10, 2006).

Aoyagi et al. teach adsorbents formed by coating active carbon with calcium alginate [column 12, Example 7]. The adsorbent is formed by dropping an aqueous solution of sodium alginate and activated carbon into an aqueous solution of calcium chloride to provide gel balls. The active carbon should have a particle diameter in the range of 5 μ –10 mm [column 4, lines 24-29]. The concentration of aqueous calcium alginate used to form the adsorbent should be in the range of 0.05-5 moles so that the proper amount of cross-linking will be achieved [column 4, line 56 – column 5, line 14]. The adsorbent can be incorporated into foods such as yogurt, jam, jellies, and others in an amount up to 60 wt. % [column 9, line 55 - column 10, line 32].

Aoyagi et al. do not teach the particle size of the adsorbent products and do not teach the degree of crosslinking of sodium alginate used.

Although Aoyagi et al. do not explicitly teach the size of active carbon-containing calcium alginate gel balls obtained in Example 7, it is disclosed that the active carbon, which is coated with calcium alginate, should have a particle diameter in the range of 5 μ –10 mm. Thus, the products of Aoyagi et al. likely fall within the claimed size range. Furthermore, the skilled artisan could easily arrive at products of the claimed size using the guidance provided regarding particle size of active carbon.

Although Aoyagi et al. do not explicitly teach the degree of crosslinking of calcium alginate, the composition of Aoyagi et al. is made in substantially the same way as the instantly claimed composition. Furthermore, the claimed degree of crosslinking is quite broad at 30-90% and it seems very likely that the calcium alginate of Aoyagi et al. has a degree of crosslinking that falls within this range. Since the Office does not have the facilities for preparing the claimed materials and comparing them with prior art inventions, the burden is on Applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

It is noted that “for preventing and healing constipation” is an intended use of the claimed composition. A recitation of the intended utility in the preamble does not impart patentability to a known composition. *In re Spada*, 911 F.2d 705, 15 U.S.P.Q.2d 1655 (Fed. Cir. 1990).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAYLA BLAND whose telephone number is (571)272-9572. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anna Jiang can be reached on (571) 272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Layla Bland/
Examiner, Art Unit 1623

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623

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